

# Committee on Resources

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## **TESTIMONY OF JOHN W. GRANDY, Ph.D. Senior Vice President, Wildlife Programs The Humane Society of the United States**

In Opposition to H.R. 3320  
Before the Subcommittee on Fisheries Conservation, Wildlife and Oceans  
June 24th, 2004

Thank you Chairman Gilchrest, and members of the Subcommittee on Fisheries Conservation, Wildlife and Oceans, for the opportunity to present the views of The Humane Society of the United States (HSUS) regarding H.R. 3320. I am Dr. John Grandy, Senior Vice President for the Wildlife Section within The HSUS, and am speaking on behalf of Wayne Pacelle, our Chief Executive Officer, whom you invited to this hearing. This testimony is presented on behalf of The Humane Society of the United States and our more 8 million members and constituents.

I have broad and relevant experience with ecological issues, particularly with waterfowl and other migratory bird species. I have a Ph.D. in wildlife ecology and management. I studied the winter ecology of black ducks and went on to become a waterfowl biologist and the director of all HSUS wildlife protection programs.

The Humane Society of the United States is dedicated to the protection of all animals from cruel and abusive treatment at the hands of man. Our Wildlife Program seeks to increase animal welfare considerations in the conservation and management of wildlife and wildlife habitat.

HR 3320 would undermine two of this nation's most fundamental environmental laws, the National Environmental Policy Act and the Migratory Bird Treaty Act.

The Migratory Bird Treaty Act (MBTA), which implemented the international conventions between and among the United States and various other nations, strives to preserve migrating birds and to prevent the "indiscriminate slaughter" of migratory birds. The MBTA prohibits the killing of any migratory bird except as permitted through regulations by the Secretary of the Interior. The Secretary of the Interior, or the delegated U.S. Fish and Wildlife Service (USFWS), may issue permits that allow the taking of migratory birds, provided that the regulations and any subsequently issued permits are consistent with the terms of the Convention. Both the statute and the regulations define specific informational requirements that must be proffered to and analyzed by the USFWS prior to the issuance of a depredation permit. This oversight responsibility is built into the very concept of the MBTA and the international conventions; that was how the framers of the law believed that the protections would be guaranteed.

The USFWS is the appropriate agency for this responsibility; it has the necessary expertise, scientific background, and institutional knowledge to carry out these duties. The USFWS is the natural choice for this role because wildlife and habitat conservation is their purpose and their mandate. In contrast, the U.S. Department of Agriculture (USDA) is required to focus on agricultural production, not the conservation or protection of wildlife or habitat.

HR 3320 would allow the USDA's Animal and Plant Health Inspection Service (APHIS) to bypass the oversight and expertise of the USFWS by taking responsibility for the issuance of migratory bird depredation permits, and would be allowed to kill and otherwise manage migratory birds with no oversight by the USFWS. This would eliminate one of the basic tenets of the MBTA. The congressional proponents and authors of the law clearly wanted the oversight authority to rest in one place within the Federal government.

HR 3320 would additionally exempt APHIS from the requirements of the National Environmental Policy Act (NEPA) with respect to migratory bird management. NEPA is our most fundamental law for environmental protection with the goal to prevent or eliminate damage to the environment and to enrich our understanding

of ecological systems and natural resources. Essentially, NEPA provides a system of checks and balances that help Federal agencies make decisions that are based on a complete understanding of the environmental consequences of agency actions. Before an agency makes a decision regarding an action that may affect the quality of the human environment, the agency must analyze and consider all the relevant information concerning the proposed action. Importantly, NEPA requires that the decision-making agency must consult with any other federal agency that has jurisdiction over, or special expertise, regarding the environmental impact involved.

Under HR 3320, APHIS could make management decisions regarding migratory birds without consulting with or obtaining permits from the USFWS, the federal agency responsible for the management and conservation of migratory birds and the implementation and enforcement of the MBTA. APHIS could proceed with migratory bird management actions without informing or soliciting information or comment from the USFWS, other federal agencies with migratory bird expertise, or the public. APHIS would not be required to consider all relevant scientific information regarding the affected bird populations and could proceed with management actions without considering any alternative actions that might accomplish the same goal with less impact upon migratory birds or other wildlife. Because HR 3320 would put APHIS in charge of issuing depredation permits, and would not require any adherence to NEPA or the MBTA, APHIS would not be legally required to consider the cumulative impacts of the issuance of depredation permits. This result would be fundamentally at odds with good public policy.

The title of the bill (the "American Aquaculture and Fishery Resources Protection Act") provides a hint of some of the intended targets of the "streamlined" management activities that could occur under HR 3320: fish-eating ("piscivorous") birds such as herons, pelicans, terns, and cormorants. The justification for lethal control of fish-eating birds is generally flimsy. For example, many of these birds have been scapegoated and blamed for declines in fish populations valued by sport and commercial anglers, despite overwhelming scientific evidence that other factors (such as pollution and over-fishing) are the primary causes of fishery declines. Fish-eating birds are also targeted at aquaculture facilities despite ongoing innovative research (including from the USDA's own researchers) and practical experience that demonstrates the effectiveness of non-lethal means of reducing this damage.

However, the scope of HR 3320 would not limit APHIS to control of fish-eating birds. Any migratory bird could become a target. In fact USDA/APHIS/Wildlife Services already kills millions of birds annually under current laws with the oversight of the USFWS. For example, in Fiscal Year 2001, APHIS/Wildlife Services field agents killed over 3 million birds in a single year, according to online data tables. The birds killed included woodpeckers, larks, pelicans, robins, cardinals, blackbirds, doves, ducks, herons, hawks, ravens, and finches, among many others. HR 3320 could lead to the indiscriminate slaughter of hundreds of thousands of additional target and non-target birds every year with no oversight by migratory bird experts and no assessment of immediate or cumulative impacts.

Without the safeguards of the MBTA and NEPA, environmentally dangerous decisions would likely be made and implemented with no oversight by those with the scientific expertise to evaluate the potential effects of these decisions. Further, with the lack of advance notification, ecologically reckless actions would not be stopped prior to the negative impacts on bird populations and their associated ecosystems. This could jeopardize the long-term viability of target and non-target bird populations, as well as other wildlife indirectly affected by such actions. Ultimately such actions could result in a need for increased federal or state oversight, protection, or restoration efforts directed toward the affected bird populations or ecosystems.

APHIS and some agricultural producers (including aquaculture and hatchery managers) have complained that there is too great a delay in the issuance of depredation permits for addressing agricultural damage due to birds. Even if this could be perceived as a legitimate problem requiring a solution, HR 3320 is clearly not a viable option. The issuance of permits is done on a case-by-case basis whereby some permits are issued immediately while others require more study to assess the potential impacts of the permit. The perception that these permits are not issued quickly enough is undercut by the fact that blanket depredation orders have been issued for some bird species, even when little or no scientific evidence supports any real need for a depredation order. These depredation orders act as a carte blanche to agricultural producers and others. For example, two depredation orders have been issued for double-crested cormorants. One allows for unlimited killing of cormorants by aquaculture and hatchery managers while the other was issued to address unsubstantiated perceptions that cormorants are depleting fish populations. Virtually no protections whatsoever remain for these birds. The HSUS is on record as strongly opposing these depredation orders. Nevertheless, it is difficult to understand producers' concerns about the issuance of permits as long as depredation orders are currently available under the MBTA. HR 3320 is a solution in search of a problem.

To truly get at the heart of the problem—the alleged need for depredation permits to resolve bird damage to agriculture—greater attention must be directed towards research on non-lethal methods to prevent and reduce such damage. Many examples exist of innovative research on bird damage management techniques that are primarily or entirely non-lethal and reduce negative impacts of management actions on target and non-target bird populations.

HR 3320 would put the management of migratory birds in the hands of an agency whose mandate is the protection of agriculture, not the conservation of birds or other wildlife. The prudent option would be to continue the oversight and management authority and responsibility envisioned by both the MBTA and NEPA. HR 3320 would arbitrarily place management authority in two different agencies with no mechanism for resolving conflicts. This sort of tinkering with an existing statutory scheme is ill-advised and will surely lead to an increase in confusion over management authority and decision-making. It will almost certainly encourage additional litigation where conflicts arise as a result.

We thank you Mr. Chairman and members of the Subcommittee for the opportunity to address HR 3320. We strongly urge you to oppose this effort to undermine the MBTA and NEPA.

Thank you.